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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,558	06/15/2006	Alain Behar	Q92399	8620
23373 7590 03/04/2010 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER JACYNA J CASIMER				
ART UNIT		PAPER NUMBER		
3754				
NOTIFICATION DATE		DELIVERY MODE		
03/04/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

sughrue@sughrue.com  
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### Office Action Summary

**Application No.**

10/563,558

**Applicant(s)**

BEHAR ET AL.

**Examiner**

J. Casimer Jacyna

**Art Unit**

3754

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-20 is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-14 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 3-10 and 12-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Sanchez 2003/0168476. Sanchez discloses a fluid dispenser head 1 that cooperates with a dispenser member 31 on a fluid reservoir 21 including a fluid duct with an inlet 118b and an outlet dispensing orifice 122 located on the distal end of the rotary portion, a closure means that includes a closure member 123 that rotates to an open position at 124, a non-rotary portion 11, a rotary portion 12, displacement means 120 that can be grasped by a user to rotate 12 and 123 with respect to 11 as claimed. In regard to claim 9, the distal area of 123 adjacent 124 constitutes the closure member because it performs the valve function of either sealing or opening outlet 118a as shown in figures 3A and 3B, the other end of 123 adjacent 123a constitutes a connection element as claimed because it connects the valve portion adjacent 124 to 116 wherein 116 is an anchor element as claimed because it is the base of the rotary section 12 that supports and secures 12 for rotation of 11. In regard to claim 13, figure 3A is a locked position as claimed which prevents the dome of 125 from being pushed wherein the dome of 125 is a pushbutton that actuates 31.
3. Claims 1-10 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by McKinney 4,257,561. McKinney discloses a fluid dispenser head 10 that cooperates with a dispenser member 34 on a fluid reservoir 26 including a fluid duct with an inlet adjacent 28 and an outlet dispensing orifice 36 which is located on the rotary portion 10, a closure means that includes a closure member 30 that is closed and opened by

screwing and unscrewing rotary member 10 with the upper wall of 10 alternately applying pressure on 30 to close 30 as shown in figure 2 or being spaced from 30 to allow 30 to open and to allow fluid to be dispensed as shown in figure 3, a non-rotary portion 22, displacement means as are threads 24 because they cause the axial motion of rotary portion 10 with a portion of threads 24 located on the non-rotary portion 22 as called for in claim 2. In regard to claim 9, the upper surface wall of 10 surrounding 36 is an anchor element as claimed because it holds or anchors the closure member 30 in place with the sidewall of 10 extending from the top of 10 to the threads 24 being a connection element as claimed. In regard to claim 13, 18 is a pushbutton that is alternately locked and unlocked with 14 depending on the position of 10 as claimed.

4. Applicant's arguments filed 12/29/2009 have been fully considered but they are not persuasive. As claimed the dispenser orifice of Sanchez is one contiguous channel 121a that extends from 124 to 122. When the entrance to 121a is closed the dispenser orifice is also closed and vice versa, when the entrance to 121a is open the orifice 122 is also open as claimed. In regards to Sanchez, Applicant contended that only the end orifice from which a user can recover the fluid can be considered the dispenser orifice. In McKinney this orifice is 36. However, with McKinney Applicant is contending the entrance to the dispensing outlet conduit adjacent 30 is the dispenser orifice. This location corresponds to 124 in Sanchez and is the beginning of the outlet dispenser channel with 36 being the end. As stated in regard to Sanchez, if the entrance channel 34 is closed the outlet 36 is also closed and vice versa and in McKinney 36 is the outlet orifice from which a user can recover the dispensed fluid.

5. Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
6. Claims 15-20 are allowed.
7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Mon. thru Fri. 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Casimer Jacyna/  
Primary Examiner, Art Unit 3754